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September 11, 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BY COURIER

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

**NOTICE OF WRITTEN
EX PARTE CONTACT**

Re: **Implementation of the Pay Telephone Reclassification and
Compensation Provisions of the Telecommunications Act
of 1996, CC Docket No. 96-128**

Dear Mr. Caton:

Enclosed for filing in this docket are the original and one copy of a letter to John Nakahata, Senior Legal Advisor, Office of Chairman Hundt, on behalf of the American Public Communications Council (APCC) regarding the barriers to deregulating the payphone market. I would ask that you include these materials in the record of this proceeding.

If you have any questions concerning this matter, please contact me at (202) 828-2226.

Thank you for your consideration.

Sincerely,



Albert H. Kramer

AHK/nw

cc: J. Muleta
M. Carowitz
M. Richards

R. Spangler
R. Baca
D. Gonzalez

J. Casserly
K. Gulick
J. Nakahata

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September 11, 1996

Mr. John Nakahata, Senior Legal Advisor
Office of Chairman Hundt
Federal Communications Commission
1919 M Street, NW
Room 814
Washington, DC 20554

Dear John:

This letter responds to your inquiry regarding the views of the American Public Communications Council ("APCC") on the barriers to deregulating the payphone market.

In order to address this issue, APCC believes that there are two categories of calls that must be addressed:

- ♦ Sent-paid calls (i.e., calls which are paid for at the telephone by depositing coins); and
- ♦ non-sent-paid calls (i.e., calls that are paid for other than by depositing coins at the pay phone, such as calls billed to third numbers, collect calls, and calling card calls. This category of calls, for purposes of this discussion, also includes toll free calls, commonly referred to in this proceeding as "800 subscriber" calls).¹

¹ These two categories, i.e., sent paid and non-sent paid, are not necessarily fixed. In a totally deregulated market free of barriers to negotiations between end-users, carriers, and public payphone providers, one or the other of these categories of calls might disappear. In fact, the market as it exists today has emerged with these two distinct categories of calls. The possibility of one or the other category disappearing is discussed below in a series of footnotes in order not to detract from the main discussion.

SENT-PAID CALLS

The primary class of sent-paid calls that must be addressed is local calls.² As the record in this proceeding clearly establishes, at the moment, local coin calling is simply not bearing its share of the cost of providing payphone service. APCC does not believe there are any barriers to deregulating the local coin calling rate, except considerations of comity, as discussed below.

Section 276 of the Telecommunications Act of 1996 gives the Commission the legal authority to set the local coin calling rate.³ Several parties have urged the Commission to deregulate local coin calling rates. These parties contend that in the absence of regulation, market considerations will drive the market to a "fair price" and fair compensation for payphone service providers. In its comments, the State of Iowa indicated that its experience with total deregulation of the local coin calling rate has been satisfactory. While rates have risen generally to about \$.35 for local calling, market forces have operated to keep the coin rate for local calling within reason. Other states have also deregulated the local coin calling rate and rates have not risen precipitously.⁴ There thus do not appear to be any serious legal or economic barriers to deregulation of sent-paid calling, and we believe deregulating the local coin calling rate would discharge the Commission's duties with respect to these calls under Section 276(b)(1)(A). Whether considerations of comity should lead the Commission to a different conclusion is addressed below.

NON-SENT-PAID CALLING

Two statutes affect the Commission's ability to effectuate deregulation of non-sent-paid calling, and these legal barriers in turn erect significant economic barriers. The Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA") mandates that "access code" calling be unblocked and allowed without an advance coin

² Although there is some amount of toll calling that is paid for by coins, the analysis of sent-paid toll calling essentially mirrors the analysis of local calling, with the exception that in the case of interstate toll calling there is no issue of state jurisdiction or "comity".

³ Section 276(b)(1)(A) directs the Commission to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call . . ." (Emphasis Added.)

⁴ See letter of August 30, 1996 from Michael Kellogg to William F. Caton. The attachment to this letter is enclosed herewith for your information.

deposit by consumers.⁵ In addition, as mentioned above, Section 276 of the Telecommunications Act 1996 requires the Commission to ensure that payphone service providers are "fairly compensated" for calls made using their payphones, a mandate which clearly extends to non-sent-paid calling.⁶

In the absence of TOCSIA, the Commission could arguably satisfy its duties under Section 276(b)(1)(A) by simply deregulating non-sent-paid calling. This would allow payphone service providers to charge whatever they wanted, or not charge, for making access code calls and 800 subscriber calls. Presumably, some carriers might want to offer coinless calling to their end users and would negotiate with payphone service providers to "unblock" their access codes and their 800 numbers. Presumably also, the carriers who want the unblocking would finance the development of technology that would allow for differentiation between their 800 subscriber numbers and other carriers' 800 subscriber numbers. Alternatively, a carrier might negotiate for only having its access codes unblocked, and leave it to payphone service providers to charge end users for 800 subscriber numbers, if the payphone service provider so chose. One could imagine a multitude of different dialing options at different payphones depending on what kinds of arrangements particular carriers had negotiated with particular payphone service providers. Industry clearinghouses might emerge to conduct negotiations with payphone providers on behalf of some carriers and not others, etc.

Such a regime would leave a multitude of issues unresolved, including the pleas of the many special interest importuners, such as the paging companies, who claim that for one reason or another, they should be exempted entirely from having to pay charges for the 800 numbers their paging customers use. In a deregulated environment, of course, these special interest pleaders would each be relegated to having to negotiate an arrangement with payphone service providers, rather than seeking relief from the Commission. Payphone service providers would, of course, not need to be before this Commission debating the proper level of compensation if there were truly a deregulated market.

For better or worse, TOCSIA does exist and so does its necessary concomitant, Section 276(b)(1)(A) of the 1996 Act, which is necessitated by the artificial constraint imposed by TOCSIA which prevents payphone service providers from negotiating for payment for the use of their payphones for non-sent-paid calling. For this reason, whatever steps the Commission may take with respect to sent-paid calling (in particular, the local

⁵ See Communications Act, § 226(c)(1)(B), (C). In theory, a payphone service provider could require consumers to deposit a coin prior to dialing an access code, but only if the payphone service provider also charged consumers for calls initiated by dialing a "0".

⁶ See H.R. Rep. 104-204 at 88-89 (July 24, 1995).

coin rate) the Commission must, in some manner, discharge its responsibility to ensure that payphone service providers are "fairly compensated" for non-sent-paid calls.⁷

BARRIERS TO ENTRY

The payphone industry is generally characterized as having few barriers to entry. It is, however, worth noting that in the 12 years since payphone competition has been authorized, only a hand full of nationwide, or even region wide, independent public payphone ("IPP") providers has emerged. While some of the LECs, and, in particular some of the Bell Operating Companies, operating from their regulated base, do provide region-wide and even nationwide services, only a small number of nationwide IPP providers has emerged. Indeed, in a prospectus prepared by Ameritech for the sale of its payphone business, "The Payphone Business of Ameritech,"⁸ Ameritech states that there are only 25 independent payphone providers which have more than 1,500 payphones. Thus, there appear to be some barriers to establishing an infrastructure that will support payphone operations across broad geographic territories. Nonetheless, in a totally deregulated market where competition was on an equal footing, there would not appear to be any "natural" economic barriers to entry.

⁷ In theory, the Commission could arguably discharge its legal responsibility under Section 276(b)(1)(A) by simply deregulating entirely the rates of sent-paid calls and allowing payphone service providers to recover all their costs and obtain all their revenue from sent-paid calling. Laying to one side the legality of such a course, it would not be consistent with a market-based approach. It would, in essence, constitute a determination by the Commission that callers who pay for calls with coins should bear entirely the cost of payphones. Furthermore, while such a solution might work in the short run, eventually the price of sent-paid calling would have to rise enough to cover all payphone service provider costs. Soon callers would realize they may be better off by making non-sent-paid calls. The result would be a narrower and narrower base of calls that are sent-paid, and increasing rates for sent-paid calls, which eventually would lead to a deterioration of payphone service. APCC does not believe that such an approach would satisfy the Commission's legal obligations under Section 276.

⁸ APCC has separately submitted the Ameritech memorandum to the Commission with the request that it be made a part of the record in this proceeding. No action has been taken on this request to date.

OTHER CONSIDERATIONS: COMITY AND UNIVERSAL SERVICE

While there are no legal barriers to deregulating the local coin calling rate, of the 16 states that filed comments in this proceeding, only five urged the Commission not to do anything that would affect the states' authority to regulate the local coin calling rate. Others recognize that the Commission has the responsibility to address this issue and that the Commission should adopt guidelines for the states, but urge the Commission to allow the states to take action within those guidelines. Still others, such as Florida, find it acceptable for the Commission to set a maximum local rate but urge the Commission to allow for a waiver procedure so that the states could seek to set a lower maximum rate where warranted. Still others, as mentioned above, such as Iowa, urge the Commission to deregulate local coin calling rates, saying that the market could be relied upon to set a fair rate. NARUC, the National Association of Regulatory Utilities Commissioners, did not file comments in this proceeding or take a position on the issue.

As mentioned above, APCC believes the Commission has the authority and that there are not significant economic barriers to deregulating local coin calling rates. Nonetheless, in the interest of comity and to avoid "rate shock" in some isolated markets, the APCC has urged the Commission to set a maximum rate of \$.40 for the local coin calling rate, and agrees with Florida that a waiver procedure might be appropriate.⁹ As in its Interconnection Proceeding,¹⁰ it could be appropriate for the Commission to establish a "default" maximum rate of \$.40 that would take effect unless the state took affirmative action to conduct a proceeding that established a record justifying a lower maximum local coin calling rate. Rates would be allowed to be set by the market, as has successfully been done in several states, within the rate ceiling.

At the same time, APCC believes it would be appropriate for the Commission to delegate to the states, authority to direct payphone service providers to place public service payphones, in accordance with minimum federal guidelines, to ensure that payphones are indeed placed, in accordance with the Section 276 statutory standards, where there otherwise would not be public payphone service. Each state could fund the public service payphones in any manner it decided, either as part of its universal service mechanism or otherwise.

⁹ The maximum rate could be a transitional mechanism to full deregulation after some period of time, such as two years or so.

¹⁰ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Dkt. No. 96-98, FCC 96-325 (August 8, 1996).

John Nakahata Senior Legal Advisor
September 11, 1996
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APCC continues to believe that this middle course which addresses consumer needs by avoiding any rate shock and which gives the states the mechanisms to ensure that there are not service gaps represents the best course for the Commission.

I hope this letter is responsive to your concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Albert Kramer by RFA". The signature is fluid and cursive.

Albert H. Kramer

AHK/rw

Enclosure

cc: Mary Beth Richards
John Muleta
Michael Carowitz
Anna Gomez
Jim Casserly
Karen Gulick
Lauren Belvin
Rudy Baca
Dan Gonzalez

Payphone Rates in Deregulated States

August 30, 1996

The RBOC Payphone Coalition submits this ex parte to provide additional information concerning the price of local payphone calls in states that have deregulated payphone rates. As the chart below shows, even in these states, the RBOC PSP charges a maximum of \$0.35 per call. To the best of the Coalition's knowledge, non-RBOC PSPs in these states charge \$0.35 as well.

State	Deregulation Date	RBOC Local Call Rate	Non-RBOC PSP Local Call Rate
Iowa	Sept. 1985	\$0.35	\$0.35*
Nebraska	Jan. 1987	\$0.35	\$0.35
North Dakota	Aug. 1993	\$0.35	\$0.35
South Dakota	Nov. 1992	\$0.25	\$0.25
Wyoming	Mar. 1995	\$0.35	\$0.35
Montana ⁺	Mar. 1990	\$0.25	\$0.25
* For some period of time, an independent PSP charged \$0.25 at certain locations, even though U S West was charging \$0.35.			
+ Detariffing applied to local calls only.			

The RBOC PSP in each of these states charges a uniform price regardless of location, so payphone patrons always pay the same rate for a local call, whether they are in an airport, at a truck stop, or on a street-corner.